Central Alberta
Regional Assessment Review Board

05 July 2011

Complaint ID#: 293
Roll No.: 2044115

FIRST CAPITAL (RED DEER) CORPORATION
UNIT 2201 4525 KINGSTON ROAD
TORONTO, ON M1E 2P1

REVENUE & ASSESSMENT SERVICES
4914 48 AVENUE
RED DEER, AB T4N 3T4

VIA EMAIL: BRIAN.LUTZ@REDDEER.CA
VIA EMAIL: DANNY.LAKE@REDDEER.CA
(PAPER COPY TO FOLLOW)

Dear Sir/Madam:

RE: NOTICE OF DECISION ON PRELIMINARY HEARING HELD 28 JUNE 2011

The decision of the Composite Assessment Review Board is attached. Paper copies will follow where indicated. As per the attached, a second preliminary hearing has been scheduled:

PRELIMINARY HEARING INFORMATION

Date of Hearing: 25 JULY
Time of Hearing: 9:00 AM
Hearing to be held at: CRIMSON STAR MEETING ROOM, 2ND FLOOR, CITY HALL, 4914 48 AVENUE, RED DEER

If you require additional information or have any questions concerning these matters please contact the Board Clerk at 403-342-8132.

Cordially,

Jackie Kurylo
Clerk, Regional Assessment Review Board
Att.

xc: AEC INTERNATIONAL, VIA EMAIL: AECCALGARY@AEC-INTERNATIONAL.COM (PAPER COPY TO FOLLOW)
112, 1212 1 STREET SE, CALGARY, AB T2G 2H8

REYNOLDS MIRTH LLP, **VIA EMAIL ONLY**: CZUKIWSKI@RMRF.COM

FASAKEN MARTINEAU DUMOULIN LLP, **VIA EMAIL ONLY:** GPUNIA@FASKEN.COM

Complaint ID 293
Roll 2044115
Decision #PREC0262 293/2011

COMPOSITE ASSESSMENT REVIEW BOARD DECISION
Preliminary HEARING DATE: 28 JUNE 2011

PRESIDING OFFICER D. MARCHAND

BETWEEN:

CITY OF RED DEER
REPRESENTED BY REYNOLDS MIRTH LLP
CAROL ZUKIWSKI, SOLICITOR (APPLICANT'S COUNSEL)

Applicant

-and-

AEC INTERNATIONAL INC. (RESPONDENT'S AGENT)
FOR CANADIAN TIRE CORPORATION LIMITED
REPRESENTED BY FASAKEN MARTINEAU DUMOULIN LLP
GULU PUNIA, SOLICITOR (RESPONDENT'S COUNSEL)

Respondent

JURISDICTION

The One-member Composite Assessment Review Board has been established in accordance with section 454.2(3) of the Municipal Government Act R.S.A. 2000, ch M-26 (MGA). The Parties attended by teleconference,

BACKGROUND / FILE HISTORY

- The Assessment Notice for Roll 2044115 was mailed January 19, 2011. An assessment complaint together with the Agent Authorization was filed by the Respondent's Agent on February 22, 2011.

- On April 11, 2011 the Municipality, now the Applicant, requested a preliminary hearing alleging an invalid complaint pursuant to s. 460(3) of the MGA.

- A Notice of Hearing relative to this application was sent April 26, 2011. Attached to the Notice of Hearing was a copy of an email from the Applicant to the Regional Assessment Review Board Clerk, dated April 11, 2011, indicating that the request for the preliminary hearing is being made pursuant to s. 460(3) of the MGA. Within the said Notice of Hearing the parties were instructed to disclose evidence at least seven (7) days prior to the hearing.

- The Composite Assessment Review Board (CARB) and the Applicant received, via email, the Respondent's submission for the preliminary hearing on June 17, 2011.

- On June 20, 2011 the ARB received the Applicant's submission for the preliminary hearing.

- Also on June 20, 2011 the ARB and the Applicant's Counsel received a letter from Respondent's Counsel indicating that it was now apparent that the Applicant's submission was based on s. 460(7) of the MGA not s. 460(3). The Respondent advised that it was their position that the only matter before the Board with respect to the June 28, 2011 hearing is the s. 460(3) application, not s.460(7) as indicated in the Complainant's submission.

- On Friday, June 24, 2011, Applicant's Counsel advised the ARB (copied to all parties) that counsel would be forwarding a joint procedural recommendation and that both parties were requesting the preliminary hearing on June 28, 2011 take place via teleconference.

- On Saturday, June 25, 2011 Applicant's Counsel submitted a joint procedural recommendation. Applicant's Counsel indicated that there was a miscommunication in regards to the issue and that the Applicant wished to raise the application under s. 460(7) of the MGA, not s. 460(3) as identified. It was pointed out that the simultaneous exchange of evidence, as set out in the regulations (Matters Relating to Assessment Complaints Regulation s. 33), may have contributed to the parties not fully being aware of the issue raised.

- On June 27, 2011 the Respondent advised that it was clear that the application was made pursuant to s. 460(3) of the MGA and that it was not a miscommunication but rather a mistake that the Application was made under s. 460(3) of the MGA instead of s. 460(7). Respondent's Counsel stated that it is the Respondent's position that the s. 460(3) application should be dismissed at the June 28, 2011 hearing and that costs be afforded to the Respondent as the Respondent was put to the costs of the answering the application that was incorrectly initiated pursuant to s. 460(3) of the MGA rather than s. 460(7).

ISSUES

The parties were given the opportunity to explain what transpired and to offer their input into the procedure going forward.

1. Legislation under which the Application is made

Applicant: Applicant's Counsel advised the CARB that clearly their application is a s. 460(7) matter and that the submission exchanged on June 20, 2011 deals only with s. 460(7). The Applicant is not taking issue with the Respondent's right to file a complaint against the assessment of Village Mall under s. 460(3) of the MGA. The Respondent owns property in the City of Red Deer, and while they are not "the" assessed person for the Village Mall, they are "an" assessed person and have the right to file a complaint. The Applicant is making an application under s. 460(7) of the MGA and s. 2 of the Matters Relating to Assessment Complaints Regulation. The simultaneous exchange provision in the Regulation means that the Respondent does not have an adequate opportunity to know the case to be met and in this case may have not had a reasonable opportunity to prepare a response to the Applicant's

application. The seven (7) day simultaneous exchange places "the duty of fairness" in question. It is the Applicant's position that allowing the Respondent an opportunity to reply to the s. 460(7) issue is reasonable.

The Applicant also advised that they would not be presenting oral argument with respect to their s. 460(7) application, but will rely on their written submission disclosed June 20, 2011.

Respondent: The Respondent's position is that the s. 460(3) application should be dismissed. Respondent's Counsel advised that he is not prepared, nor is he in a position, to respond to a s. 460(7) application. Respondent's Counsel stated that he needs instruction and was reluctant to assume that he would be retained to deal with a s. 460(7) application and to be responsible for the setting dates that would bind the Respondent.

2. Costs

Applicant: Applicant's Counsel advised that they had not had an opportunity to speak to the Municipality regarding costs, and that they would need to speak to their client prior to offering comments.

Respondent: Respondent's Counsel referred to the regulations and argued that efforts made to respond to the s. 460(3) application were unnecessary and as such the Respondent is seeking costs according to Schedule 3 of the Matters Relating to Assessment Complaints Regulation (for property over $50 million dollars) under parts 2 & 3 and suggests that $2,000 is the appropriate amount.

RECESS

The CARB recessed for a half hour for counsels to consult with their clients. Both clients were unavailable to correspond with and the CARB is left without assistance from the parties to move forward.

FINDINGS

Within the April 26, 2011 application, only s. 460(3) of the MGA was identified, alleging that this was an invalid complaint.

The Board concurs that the simultaneous exchange may have contributed to the confusion. Procedural fairness should provide for the party being complained against an opportunity to know the case they have to meet, however, because of the regulations, this was not possible.

The CARB finds that, based on the material exchanged on June 20, 2011 and the subsequent dialogue between the parties, a separate s. 460(7) application at this time is not necessary.

The CARB finds that the Respondent's Counsel has been duly advised that a 460(7) application needs a response.

The CARB accepts the Applicant's June 20, 2011 disclosure as the Applicant's submission.

INSTRUCTIONS:

The CARB is setting a revised preliminary hearing date with the understanding being that the Applicant will not be making an oral presentation. The written response to the 460(7) exchanged material must be responded to by Monday, July18, 2011.

Prior to the CARB issuing its decision relative to costs the CARB will await a written response from the Applicant. A response shall be provided within seven (7) days of this order.

With consideration for all parties and their clients, the date for the preliminary hearing application pursuant to s. 460(7) is set for **Monday, 25 July 2011 at 9:00 a.m.** If either party has difficulty with this date, notification must be provided to the Regional Assessment Review Board Clerk within seven (7) days of this decision. Notice must also indicate the alternate, agreed to date.

The CARB recesses and awaits the responses.

Dated at the City of Red Deer, in the Province of Alberta this 05 day of July, 2011 and signed by the Clerk of the Regional Assessment Review Board at the request of the Presiding Officer.

FOR D. Marchand, Presiding Officer